

Q is a member selected from the group consisting of CH and N; and L is a member selected from the group consisting of lower alkyl, which is optionally substituted with up to 3 substituents each independently selected from the group consisting of halo, cyano, hydroxy, isothiocyanato, lower alkyloxy, aryl, aryloxy, arylthio, arylsulfonyl, amino; lower alkenyl; and aryllower alkenyl; wherein aryl as used in the foregoing definitions, is a member selected from the group consisting of phenyl, substituted phenyl, naphthalenyl, thienyl, halothienyl, (lower alkyl)thienyl, pyridinyl, mono- and di(lower alkyloxy)pyridinyl, furanyl and 1-(lower alkyl)pyrrolyl; wherein said substituted phenyl is phenyl having from 1 to 3 substituents each independently selected from the group consisting of halo, hydroxy, nitro, cyano, trifluoromethyl, lower alkyl, lower alkylthio, lower alkylsulfonyl, lower alkylsulfonyllower alkyl, phenyllower alkylsulfonyl, phenylsulfonyllower alkyl, amino, mono- and di-(lower alkyl)amino, lower alkanoyl, a radical of the formula $R^6-C_pH_{2p}-O-$, wherein

p is an integer of from 1 to 6 inclusive; and

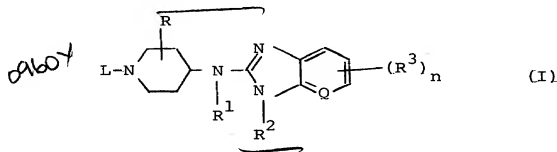
R^6 is a member selected from the group consisting of hydrogen, amino, cyano, phenyl, aminocarbonyl, mono- and di(lower alkyl)-aminocarbonyl, lower alkyloxy carbonyl, phenyllower alkyloxy carbonyl, 4-morpholinylcarbonyl, 1-piperidinylcarbonyl and 1-pyrrolidinylcarbonyl, and

a radical of the formula R^7-O- , wherein

R^7 is a member selected from the group consisting of alkanoyl, phenylcarbonyl, phenyllower alkylcarbonyl, lower alkyl-oxy carbonyl, phenyllower alkyloxy carbonyl, aminocarbonyl, phenylaminocarbonyl, mono-

and di-(lower alkyl)aminocarbonyl,
 wherein said phenyl in the definition
 of said R^7 may be optionally substituted
 with up to 3 substituents each independ-
 ently selected from the group consisting
 of halo, cyano, nitro, lower alkyl and
 lower alkyloxy.

18. An antihistaminic pharmaceutical composition com-
 prising an inert carrier material and as an active ingredient an
 effective antihistaminic amount of a chemical compound selected
 from the group consisting of a N-heterocyclyl-4-piperidinamine
 having the formula



and the pharmaceutically acceptable acid addition salts thereof,
 wherein

R is a member selected from the group consisting of hydrogen and
 lower alkyl;

R^1 is a member selected from the group consisting of hydrogen,
 lower alkyl, cycloalkyl, aryl lower alkyl and lower alkanoyl;

R^2 is a member selected from the group consisting of hydrogen,
 alkyl having from 1 to 10 carbon atoms, aryl, cycloalkyl and mono-
 and diaryl (lower alkyl);

R^3 is a member independently selected from the group consisting
 of halo, lower alkyl, lower alkyloxy, trifluoromethyl;

n is an integer of from 0 to 2 inclusive;

Q is a member selected from the group consisting of CH and N; and

L is a member selected from the group consisting of lower alkyl,

which is optionally substituted with up to 3 substituents each independently selected from the group consisting of halo, cyano, hydroxy, isothiocyanato, lower alkyloxy, aryl, aryloxy, arylthio, arylsulfonyl, amino; lower alkenyl and aryllower alkenyl; wherein aryl as used in the foregoing definitions, is a member selected from the group consisting of phenyl, substituted phenyl, naphthalenyl, thienyl, halothienyl, (lower alkyl)thienyl, pyridinyl, mono- and di(lower alkyloxy)pyridinyl, furanyl and 1-(lower alkyl)pyrrolyl; wherein said substituted phenyl is phenyl having from 1 to 3 substituents each independently selected from the group consisting of halo, hydroxy, nitro, cyano, tri-fluoromethyl, lower alkyl, lower alkylthio, lower alkylsulfonyl, lower alkylsulfonyllower alkyl, phenyllower alkylsulfonyl, phenylsulfonyllower alkyl, amino, mono- and di-(lower alkyl)-amino, lower alkanoyl, a radical of the formula $R^6-C_pH_{2p}-O-$, wherein

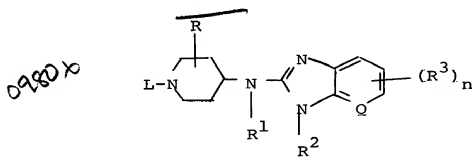
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p is an integer of from 1 to 6 inclusive; and R^6 is a member selected from the group consisting of hydrogen, amino, cyano, phenyl, aminocarbonyl, mono- and di(lower alkyl)-aminocarbonyl, lower alkyloxy-carbonyl, phenyllower alkyloxy-carbonyl, 4-morpholinylcarbonyl, 1-piperidinylcarbonyl and 1-pyrrolidinylcarbonyl, lower alkenyl; and a radical of the formula R^7-O- , wherein

R^7 is a member selected from the group consisting of alkanoyl, phenylcarbonyl, phenyllower alkylcarbonyl, lower alkyloxy-carbonyl, phenyllower alkyloxy-carbonyl, aminocarbonyl, phenylaminocarbonyl, mono- and di-(lower alkyl)aminocarbonyl,

wherein said phenyl in the definition of said R^7 may be optionally substituted with up to 3 substituents each independently selected from the group consisting of halo, cyano, nitro, lower alkyl and lower alkyloxy.

19. A method to prevent the release of histamine in warm-blooded animals, which comprises the systemic administration to said animals of an effective antihistaminic amount of a chemical compound selected from the group consisting of a N -heterocyclyl-4-piperidinamine having the formula



and the pharmaceutically acceptable acid addition salts thereof, wherein

R is a member selected from the group consisting of hydrogen and lower alkyl;

R^1 is a member selected from the group consisting of hydrogen, lower alkyl, cycloalkyl, aryl, lower alkyl and lower alkanoyl;

R^2 is a member selected from the group consisting of hydrogen, alkyl having from 1 to 10 carbon atoms, aryl, cycloalkyl and mono- and diaryl (lower alkyl);

R^3 is a member independently selected from the group consisting of halo, lower alkyl, lower alkyloxy, trifluoromethyl;

n is an integer of from 0 to 2 inclusive;

Q is a member selected from the group consisting of CH and N; and

L is a member selected from the group consisting of lower alkyl, which is optionally substituted with up to 3 substituents each

independently selected from the group consisting of halo, cyano, hydroxy, isothiocyanato, lower alkyloxy, aryl, aryloxy, arylthio, arylsulfonyl, amino; lower alkenyl; aryllower alkenyl; wherein aryl as used in the foregoing definitions, is a member selected from the group consisting of phenyl, substituted phenyl, naphthalenyl, thienyl, halothienyl, (lower alkyl)thienyl, pyridinyl, mono- and di(lower alkyloxy)pyridinyl, furanyl and 1-(lower alkyl)pyrrolyl; wherein said substituted phenyl is phenyl having from 1 to 3 substituents each independently selected from the group consisting of halo, hydroxy, nitro, cyano, trifluoromethyl, lower alkyl, lower alkylthio, lower alkylsulfonyl, lower alkylsulfonyllower alkyl, phenyllower alkylsulfonyl, phenylsulfonyllower alkyl, amino, mono- and di-(lower alkyl)amino, lower alkanoyl, a radical of the formula $R^6-C_pH_{2p}-O-$, wherein

p is an integer of from 1 to 6 inclusive; and

R^6 is a member selected from the group consisting of hydrogen, amino, cyano, phenyl, aminocarbonyl, mono- and di(lower alkyl)-aminocarbonyl, lower alkyloxycarbonyl, phenyllower alkyloxycarbonyl, 4-morpholinylcarbonyl, 1-piperidinylcarbonyl and 1-pyrrolidinylcarbonyl, lower alkenyl; and

a radical of the formula R^7-O- , wherein

R^7 is a member selected from the group consisting of alkanoyl, phenylcarbonyl, phenyllower alkylcarbonyl, lower alkyloxy-carbonyl, phenyllower alkyloxycarbonyl, aminocarbonyl, phenylaminocarbonyl, mono- and di-(lower alkyl)aminocarbonyl, wherein said phenyl in the definition of said R^7 may be optionally substituted with

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decision will not support the Examiner's requirement for restriction. The Weber decision stands for the proposition that an Applicant has a right to have each claim examined on the merits and that he is allowed to claim the invention as he contemplates it. Thus, any PTO practice which forces an Applicant to divide a single claim into its component parts is improper.

Applicants recognize that the question of the "Improper Markush" rejection was not decided in Weber, but rather was remanded to the Board of Appeals for its consideration. However, the Examiner must recognize that the Court specifically stated that:

"...the result of any such consideration must be consistent with our analysis of Applicants' rights under the second paragraph of 35 USC 112."

In view of the holding of the Court that a rejection under Section 121 violates the basic right of the Applicant to claim his invention as he chooses, it is respectfully submitted that the Examiner's present requirement is improper. This impropriety is demonstrated by the fact that, although the Examiner nowhere refers to Section 121 by number, he nevertheless uses the "independent and distinct inventions" language from this Section as a reason for his requirement.

B. Other Decisions Cited by the Examiner

Far from being an "emergency procedure", Markush claims in pharmaceutical applications are now the accepted practice, and any reference by the Examiner to the "special kind of claim structure" discussed in 1925 in Ex parte Markush is clearly not relevant to the present situation. Indeed, claims containing generic formulas of the type now called "Markush" claims were